

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96118; File No. SR-ICEEU-2022-019)

October 20, 2022

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice and Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the Investment Management Procedures

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 11, 2022, ICE Clear Europe Limited (“ICE Clear Europe” or the “Clearing House”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule changes described in Items I, II and III below, which Items have been prepared primarily by ICE Clear Europe. ICE Clear Europe filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(1) thereunder,⁴ such that the proposed rule change was immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

ICE Clear Europe Limited (“ICE Clear Europe” or the “Clearing House”) proposes to modify its Investment Management Procedures (the “Investment Management Procedures” or the “Procedures”) to clarify certain permitted investments

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(1).

and related limits for the Clearing House when managing cash received from Clearing Members as margin or from the Clearing House's contribution to the guaranty fund.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

ICE Clear Europe is proposing to update the Table of Authorised Investments and Concentration Limits for Cash from CMs and from Skin In The Game (the "Table") in the Procedures to make certain clarifications that reflect limitations on investments that can be made with customer funds provided by FCM Clearing Members under applicable law. The amendments reflect restrictions that ICE Clear Europe currently observes (and are described elsewhere in the existing Procedures), and accordingly will not constitute a change in practice. Specifically, the amendment would provide that the reference in the Table to there being "no limit" for counterparty concentration in respect to investments in (i) US government agency bonds and (ii) UK government agency bonds, as well as the 15% concentration limit specified for the purchase of EU government agency bonds each applies to cash provided by non-FCM Clearing Members. The amendments would also

state explicitly in the Table that FCM customer funds may not be invested in such assets. The proposed changes reflect limitations under CFTC regulations.⁵ Such updates are intended to provide greater clarity in the Table as to the permissible investment of customer cash provided by Clearing Members and accurately document existing practices, consistent with legal requirements.

(b) Statutory Basis

ICE Clear Europe believes that the proposed amendments to the Investment Management Procedures are consistent with the requirements of Section 17A of the Act⁶ and the regulations thereunder applicable to it. In particular, Section 17A(b)(3)(F) of the Act⁷ requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest.

The proposed changes to the Investment Management Procedures are designed to reflect the Clearing House's practices with respect to the management of investments, in

⁵ Consistent with ICE Clear Europe's current practice, certain limitations in the amendments are more restrictive than required under CFTC regulations. For example, investment of FCM customer funds in U.S. agency securities is not permitted, as described in the amendments, although CFTC Rule 1.25(b)(3)(i)(B) would permit investment in U.S. agency obligations up to a maximum of 50 percent of the total assets held in segregation by the futures commission merchant or derivatives clearing organization. 17 C.F.R. 1.25(b)(3)(i)(B). A footnote referencing this rule would be included in the Table.

⁶ 15 U.S.C. 78q-1.

⁷ 15 U.S.C. 78q-1(b)(3)(F).

light of existing CFTC regulations relating to the investment of customer funds provided by FCM Clearing Members. The amendments would reflect certain limitations under CFTC Rule 1.25, as discussed above, on investments of FCM customer cash in agency securities, consistent with the Clearing House’s current practice. The proposed amendments thus promote the accuracy and clarity of the Clearing House’s policies and procedures and are consistent with the prompt and accurate clearing and settlement of cleared contracts. The amendments are thus also generally consistent with the protection of investors and the public interest in the safe operation of the Clearing House. The updates will also facilitate management of the cash held by the Clearing House from Clearing Members and their customers in accordance with applicable law, and thus enhance the safeguarding of securities and funds in ICE Clear Europe’s custody or control or for which it is responsible. Accordingly, the amendments are consistent with the requirements of Section 17A(b)(3)(F).⁸

Rule 17A-22(e)(16) requires clearing agencies to safeguard their own and their “participants’ assets, minimize the risk of loss and delay in access to these assets, and invest such assets in instruments with minimal credit, market and liquidity risks.”⁹ As discussed above, the amendments to the Investment Management Procedures are intended to more clearly document investment limitations in connection with the investment of cash assets provided by Clearing Members to reflect current practice and applicable law, including the requirements of CFTC regulations. As such, the revised

⁸ 15 U.S.C. 78q-1(b)(3)(F).

⁹ 17 CFR 240.17Ad-22(e)(16).

Investment Management Procedures will help enable the Clearing House to safeguard such assets and minimize the risk of loss from liquidity and investment risks, consistent with the requirements of Rule 17Ad-22(e)(16).¹⁰

(B) Clearing Agency's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed amendments would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The changes are being proposed in order to update the Investment Management Procedures to provide clarifications and additional details where necessary in order to reflect existing practices and are not intended to impose new requirements on Clearing Members. The terms of clearing are not otherwise changing. ICE Clear Europe does not believe that proposed amendments would adversely affect competition among Clearing Members or other market participants or affect the ability of market participants to access clearing generally. Therefore, ICE Clear Europe does not believe the proposed rule change imposes any burden on competition that is inappropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments relating to the proposed amendment has not been solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any comments received with respect to the proposed rule change.

¹⁰ 17 CFR 240.17Ad-22(e)(16).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and paragraph (f) of Rule 19b-4¹² thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>) or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-ICEEU-2022-019 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f).

All submissions should refer to File Number SR-ICEEU-2022-019. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at <https://www.theice.com/clear-europe/regulation>.

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ICEEU-2022-019 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

J. Matthew DeLesDernier,
Deputy Secretary.

¹³ 17 CFR 200.30-3(a)(12).